



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31200877

Date: MAY 21, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an advanced computing researcher, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded the Petitioner fulfilled two of the three claimed criteria. Specifically, the Director determined the Petitioner met judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) but did not satisfy original contributions under 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner argues the Director’s decision “well exceeds the proper ‘preponderance of the evidence’ standard” and did not “fully review and properly consider totality of evidence submitted for Original Contributions of Major Significance criterion.” Specifically, the Petitioner contends the Director failed to correctly analyze his testimonial letters, publication record, citation history, notable citations by others, and patent record.¹ We have reviewed the Petitioner’s initial submission, his response and additional documentation from the Director’s request for evidence, and the Director’s decision. We do not concur with the Petitioner’s claims, and we adopt and affirm the Director’s decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration “ to the case). Here, the decision reflects the Director thoroughly reviewed the record and correctly and sufficiently articulated reasons why the evidence and eligibility claims did not satisfy the original contributions criterion.

¹ The Petitioner also submits new evidence on appeal. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial”).

For instance, the Director's decision discussed the Petitioner's submission of testimonial letters, including specifically discussing a sampling of them. Ultimately, the Director found that while the Petitioner's research contributed to the field, as is inherently the case of research-type fields, the letters did not establish how those contributions have been majorly significant, as required by the regulation.² Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.³ Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.⁴ In this case, the letters lacked specific, detailed information explaining how the Petitioner's contributions have influence or impacted in a majorly significant manner or have somehow risen to level considered to be of major significance. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In addition, the Petitioner claims that his "research has clearly appeared in multiple top-tier, international journals and conferences." However, the Director specifically addressed this assertion by explaining the articles published in highly ranked journals or from reputable conference proceedings do not necessarily establish that the articles have been majorly significant in the field, nor are we persuaded that all articles appearing in highly esteemed journals are automatically considered to be of major significance in the field.⁵ The issue for this criterion is not reputation of the journal or conference but whether the article is considered by the field to be of major significance. Moreover, a publication that bears a high ranking or impact factor reflects the publication's overall citation rate; it does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal inevitably indicates a contribution of major significance. Here, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. The number of articles published in highly ranked journals or reputable journal proceedings, however, may be a consideration and more appropriate for the final merits determination rather than at the initial evidentiary stage.

Furthermore, the Petitioner argues that "by comparing [his] citation record to Clarivate Analytics' Essential Science Indicators, we demonstrated that his papers consistently rank among the most cited Computer Science articles for their given publication years." Again, the Director specifically addressed this argument. The comparative ranking to baseline or average citation rates does not automatically establish majorly significant contributions in the field.⁶ The issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than

² See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual> (analysis under this criterion focuses on whether the person's original work constitutes major, significant contributions in the field).

³ *Id.*

⁴ *Id.*

⁵ For instance, the Petitioner did not explain how articles garnering no or little attention from the field demonstrate original contributions of major significance even if published in highly ranked journals.

⁶ For example, according to the data from InCites Essential Indicators, computer science papers published in 2022 receiving 3 citations were in the top 10% and 12 citations were in the top 1%. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top 10% or 1% of most highly cited articles according to year of publication.

where his citation rates rank among the averages of others in his field. A more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. The Petitioner has not demonstrated, as he asserts, that his articles at the time of filing, using InCites Essential Science Indicators methodology through citation numbers and percentiles, resulted in original contributions of major significance in the field.⁷

Moreover, the Petitioner contends his "level of citations" "has exerted and maintained an impressive influence on the field of advanced computing." The Director determined the Petitioner's citation history did not show that any of his authored work constituted original contributions of major significance. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently shown that the citations for any of his published articles are commensurate with contributions of major significance. The Petitioner did not articulate the significance or relevance of the citations to his articles. For example, he did not demonstrate that these citations are unusually high in his field or how they compare to other articles that the field views as having been majorly significant. While the Petitioner asserts that his submission of sample articles by others who have cited to his work "illustrate how [he] has helped guide the work of his peers," the Petitioner did not show the significance of his research in the overall field beyond the authors who cited to his work.⁸ Although his citations are indicative that his research has received some attention from the field, the Petitioner did not establish that his citation numbers to his individual articles represent majorly significant contributions in the field.⁹

Finally, the Petitioner claims that the Director "fail[ed] to take proper notice of [his] numerous patents and the evidence confirming their commercialization." The Director acknowledged the Petitioner's submission of evidence and indicated that "the record does not include documentary evidence of widespread commercial or industrial implementation of the Petitioner's patents, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field of advance computing as a whole."¹⁰ Although the Petitioner references various letters, similar to our discussion above regarding testimonial letters, the letters confirm implementation but make vague, general indications without establishing how the patented technology has impacted or influenced the field in a major, significant manner.

For the reasons discussed above, considered both individually and collectively, we concur with the Director's decision, concluding Petitioner has not shown he has made original contributions of major significance in the field.

⁷ The Petitioner's documentation from Clarivate Analytics reflects that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers," and "[c]onsequently, citation rates should not be interpreted as representing the central tendency of the distribution." Thus, the Petitioner did not show the reliability of the figures.

⁸ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2); see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

⁹ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (providing an example that published research provoking widespread commentary on its importance from others working in the field, and documentation that is has been highly cited relative to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor).

¹⁰ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (indicating that evidence that the person developed a patented technology that has attracted significant attention or commercialization may establish the significance of the person's original contribution to the field).

III. CONCLUSION

The Petitioner did not establish he satisfies three categories of evidence. Therefore, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve this issue.¹¹

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

¹¹ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).